

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Judith Le	Team: Squad #2	CCRB Case #: 201801329	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/04/2017 4:35 PM	Location of Incident: § 87(2)(b)	Precinct: 09	18 Mo. SOL 4/4/2019	EO SOL 4/4/2019	
Date/Time CV Reported Sat, 02/10/2018 6:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/15/2018 11:08 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenneth Francis	3179	950436	NARCBMS
2. POM Benjamin Lopez	2531	953007	NARCBMS
3. POM Louis Defranco	1794	952648	NARCBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Fabian Sanchez	00000	932211	NARCBMS
2. POM Dennis Frey	3183	948987	NARCBMS
3. DT3 Cleavens Duchatelier	2748	933761	NARCBMS
4. UC 339		000000	NARCBMS
5. UC 336		000000	NARCBMS
6. DT2 Christophe Callow	01310	903542	NARCBMS
7. DT3 Samantha Gill	01311	949028	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.POM Louis Defranco	Force: Police Officer Louis DeFranco used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Benjamin Lopez	Force: Police Officer Benjamin Lopez used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Kenneth Francis	Abuse: Police Officer Kenneth Francis did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

### Case Summary

On February 1, 2018, Sergeant Robert Garcia of the 9<sup>th</sup> Precinct filed a complaint with IAB on behalf of § 87(2)(b) who had reported the complaint verbally to Sergeant Garcia. It was received by the CCRB on February 15, 2018, under IAB Log# 18-6046.

On October 4, 2017, at approximately 4:35 p.m., in front of § 87(2)(b) in Manhattan, § 87(2)(b) and § 87(2)(e), § 87(2)(f) § 87(2)(g). Shortly thereafter, Lieutenant Fabian Sanchez, Police Officer Kenneth Francis, Police Officer Benjamin Lopez, Police Officer Dennis Frey, and Police Officer Louis DeFranco of Manhattan Borough South Narcotics apprehended the three males. Police Officer DeFranco and Police Officer Lopez allegedly tackled § 87(2)(b) and punched him in his head and body (**Allegations A and B: Force – Physical Force, § 87(2)(g)**). § 87(2)(b) allegedly told Police Officer Francis he was in pain, but was not provided with medical treatment (**Allegation C: Abuse of Authority – Refusal to Obtain Medical Treatment, § 87(2)(g)**). § 87(2)(b) was subsequently arrested and charged with criminal sale of a controlled substance in the 3rd degree, and criminal possession of a controlled substance in the 3rd degree (**Board Review #1**).

No video footage capturing the incident was found.

### Findings and Recommendations

**Allegation (A) Force: Police Officer Louis DeFranco used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer Benjamin Lopez used physical force against § 87(2)(b)**

§ 87(2)(b) was interviewed at the CCRB on April 11, 2018. Police Officer Francis was interviewed at the CCRB on May 22, 2018. Police Officer Lopez was interviewed at the CCRB on May 23, 2018. Police Officer DeFranco was interviewed at the CCRB on May 30, 2018.

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

The Google Streetview image of the incident location (**Board Review #2**) shows two steps leading up to the doorway of 8 East 3<sup>rd</sup> Street.

§ 87(2)(b) stated that after participating in the narcotics transaction, he walked away from the other individuals. § 87(2)(b) was on the entry stairwell of § 87(2)(b) and in the process of opening the door, when Police Officer DeFranco grabbed him in a “bear hug,” spun him down three steps, and brought him to the ground in a prone position. § 87(2)(b) was pinned to the ground and handcuffed. Police Officer Lopez and another officer, who § 87(2)(b) could not see, then placed their knees on his back. § 87(2)(b) felt someone punch him in the back and right side of his head two times, and Police Officer DeFranco

repeatedly hit § 87(2)(b) in his right ribs. § 87(2)(b) repeatedly asked the officers why they were hitting him when he was already handcuffed. The officers instructed § 87(2)(b) to stop resisting. After about six minutes, the officers lifted § 87(2)(b) from the ground and placed him in the prisoner van. § 87(2)(b) had a skinned right elbow and skin missing from his fingers which he believed were a result of being slid by Police Officer DeFranco from the building's steps to the ground. He also felt pain in his ribs. Approximately five days later, while incarcerated at § 87(2)(b), he was diagnosed with a contusion to the chest wall; nine days after that, § 87(2)(b) was diagnosed with a displaced fracture of a rib, which he believed to have been caused by the force used by officers during his arrest.

§ 87(2)(b)'s Pre-arraignment Screening Form (**Privileged Document: Board Review #10**), dated October 4, 2017, found that § 87(2)(b) was not sick or injured.

§ 87(2)(b)'s medical records from § 87(2)(b) (**Privileged Documents: Board Review #s 4 and Board Review #9**) show that on § 87(2)(b), when § 87(2)(b) was admitted to the § 87(2)(b), he stated he had bone and muscle pain and chills. He did not say anything about rib pain. On § 87(2)(b), § 87(2)(b) was seen for a complaint relating to secondary trauma to his bilateral rib cage. An examination showed tenderness to his bilateral rib cage. An x-ray was taken of his chest. He was diagnosed with a contusion to the chest wall, and given ibuprofen 400 mg. On § 87(2)(b), § 87(2)(b) was recalled for an abnormal right rib series. His right 11<sup>th</sup> rib had a displaced fracture. An x-ray for his left lower ribs returned no fractures or displacement. An x-ray of his right shoulder found no fractures. He was prescribed Naproxen.

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) The officers informed § 87(2)(b) that they were police officers, instructed him to give them his hands, and grabbed him by his arms. § 87(2)(b) initially tensed his body when the officers grabbed him, but became compliant when the officers identified themselves. The officers conducted a "controlled takedown" to the ground and did not tackle or spin § 87(2)(b) to the ground. Either Police Officer Lopez or Police Officer DeFranco then immediately handcuffed § 87(2)(b). At no point after § 87(2)(b) was handcuffed did Police Officer Lopez use physical force against him or observe Police Officer DeFranco do so. He did not place his knee on him or punch him or observe Police Officer DeFranco do so. No other officers assisted in apprehending § 87(2)(b). After § 87(2)(b) was handcuffed and Police Officer Lopez saw he was okay, he left him with Police Officer DeFranco and went to assist the other officers in apprehending the other individuals. During this time, he did not look back to see what was going on with § 87(2)(b).

Police Officer DeFranco stated that after a description was provided for the individuals, he saw § 87(2)(b) entering the front door of 8 East 3<sup>rd</sup> Street. § 87(2)(b) was walking up the steps when Police Officer DeFranco and Police Officer Lopez arrived simultaneously and grabbed § 87(2)(b)'s right arm. § 87(2)(b) attempted to spin away by moving his right arm away from Police Officer DeFranco. Police Officer DeFranco and Police Officer Lopez

then each grabbed one arm, guided § 87(2)(b) down to the ground, and placed him onto the sidewalk in a “controlled takedown.” At no point was § 87(2)(b) thrown or tackled to the ground. The officers then placed handcuffs around § 87(2)(b)’s wrists and immediately lifted him back upright. Police Officer Lopez left to assist the field team apprehend other individuals, while Police Officer DeFranco stayed with § 87(2)(b). At no point after § 87(2)(b) was handcuffed did the officers use any additional force against him. Neither Police Officer DeFranco nor Police Officer Lopez placed their knee on § 87(2)(b)’s back or punched him. No additional officers came to assist him.

Police Officer Francis stated that he and his team were conducting a buy-and-bust operation and he was assigned as the arresting officer for the operation. He was on foot when an undercover signaled a positive buy and gave descriptions for three individuals by height, weight, clothing, and color of skin. Police Officer Francis approached § 87(2)(b) and § 87(2)(b) who fit the descriptions provided, at the top of the block, near Bowery, and apprehended them without incident. The third individual, § 87(2)(b) was apprehended in front of 8 East 3<sup>rd</sup> Street. At the time of § 87(2)(b)’s arrest, Police Officer Francis was about thirty feet away and focused on § 87(2)(b) and § 87(2)(b). Police Officer Francis was not involved in § 87(2)(b)’s apprehension and did not look down the block to see what was going on. He did not see any officers tackle § 87(2)(b) down the stairs, or use force against him while he was on the ground. By the time Police Officer Francis saw § 87(2)(b) he was already handcuffed and standing on the sidewalk.

Arrest Report § 87(2)(b) (**Board Review #1**) states that § 87(2)(b) was arrested by Police Officer Francis for criminal sale of a controlled substance and criminal possession of a controlled substance. § 87(2)(e), § 87(2)(f). He was also observed exchanging a quantity of heroin for US currency with another arrested individual. He was found in possession of an additional quantity of crack cocaine when he was arrested.

Patrol Guide 221-02 states that Members of Service may use reasonable force to gain control, compliance, or custody of an uncooperative person (**Board Review #3**).

§ 87(2)(g)

[REDACTED]

**Allegation (C) Abuse of Authority: Police Officer Kenneth Francis did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) stated that, after his arrest, he was in so much pain that he could not move. Once he got to the stationhouse, § 87(2)(b) immediately told Police Officer Francis that he was in pain. Police Officer Francis did not respond to § 87(2)(b). He repeated this complaint several times to multiple unidentified officers at the stationhouse and at Central Booking, but did not receive medical attention until several days after he was incarcerated at § 87(2)(b).

Police Officer Francis stated that as the arresting officer, he debriefed § 87(2)(b) at the stationhouse. § 87(2)(b) did not say anything about being in pain. Police Officer Francis did not see any injuries on § 87(2)(b).

The 9<sup>th</sup> Precinct Command Log for October 4, 2017 (**Board Review #5**) notes that at 7:05 p.m., § 87(2)(b) was logged at the stationhouse desk. It notes that his physical condition appeared to be normal and he did not request medical attention.

Police Officer DeFranco stated that he walked § 87(2)(b) to the prisoner van. § 87(2)(b) appeared “unhappy” and complained about being arrested because he was not a drug dealer. § 87(2)(b) did not say anything about being in pain and Police Officer DeFranco did not see any injuries on him. § 87(2)(b) was then placed in the prisoner van. Police Officer DeFranco did not see § 87(2)(b) again until at the stationhouse, but did not have a conversation with him there.

Police Officer Lopez stated that he saw § 87(2)(b) again after the officers reconvened in front of 8 East 3<sup>rd</sup> Street to wait for the prisoner van. He did not hear § 87(2)(b) say anything about being in pain. He did not see any injuries on him. At approximately 6:50 p.m., Police Officer Lopez again saw § 87(2)(b) at the stationhouse. He did not say anything about being in pain, and Police Officer Lopez did not hear § 87(2)(b) say anything to anyone else about being in pain.

Patrol Guide 210-04 states that officers must provide medical attention to a sick or injured prisoner by requesting an ambulance or transporting them to a hospital (**Board Review #6**).

§ 87(2)(g)  
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### Civilian and Officer CCRB Histories

- Police Officer DeFranco has been a member-of-service for five years and has been a subject in seven cases, totaling 11 allegations, none of which were substantiated. § 87(2)(g)  
[REDACTED]
- Police Officer Lopez has been a member-of-service for five years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)  
[REDACTED]
- Police Officer Francis has been a member-of-service for six years and has been a subject in one CCRB complaint, containing one allegation, which was not substantiated.
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (**Board Review #7**).

### Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- A notice of claim search request was submitted to the New York City Office of the Comptroller on June 9, 2018. Results will be added upon receipt.

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Squad No.: 2

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date